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## "Who is a LatCrit?": Jerome Culp and Angela Harris Provide Answers and Ways of Being

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## “Who is a LatCrit?”:

### Jerome Culp and Angela Harris Provide Answers and Ways of Being

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*Jerome McCristal Culp, Jr. Memorial Lecture*  
Margaret Montoya<sup>1</sup> with Angela Harris

Buenas tardes, no tengo palabras para comunicarles el privilegio que este honor, esta oportunidad representa para mi. Muchísimas gracias por extenderme esta invitación. Thank you to the organizers, to Sarudzayi Matambanadzo (Tulane), Marc-Tizoc González (St. Thomas), Tayyab Mahmud (Seattle), and too many more to name. Thank to those who prepared the food and those who will clean up. Thank you, particularly, to Angela.

LatCrit was, and remains, my academic home; through years and years, it was my refuge, safe space, and a spa for my mind, heart, and spirit. LatCrit embraced me, opened a space for me and my voice, and accepted my contributions when my law school rejected me. I owe all of you a great debt. My talk is targeted particularly at those of you who are new to LatCrit, new faculty, or aspiring faculty.

My task this evening is prodigious. For those of you who didn't know Jerome, I want to highlight why you should devote time to reading his articles; he is very relevant today. Jerome was prolific and broad in what he wrote, using the tools and vocabulary of economics in Race scholarship, analyzing cases from employment discrimination and torts, and rigorously thinking what it means to be a law professor of color. So, my task is to

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<sup>1</sup> Professor Emerita of Law, University of New Mexico (“UNM”) School of Law and Visiting Professor of Family and Community Medicine and former Senior Advisor to Chancellor, UNM Health Sciences Center (“HSC”). My gratitude goes to Librarian Ernesto Longa, whose research assistance was invaluable.

remember Jerome, while we also celebrate the equally prolific, eloquent, and elegant Angela Harris. Jerome and Angela were close friends, and I seek to honor that friendship as well as the central role both occupied in creating and sustaining LatCrit and its Critical Race Theory relative.

It has become banal and too commonplace to say that someone speaks Truth to Power, but it is demonstrable that Jerome repeatedly Talked Back forcefully, emphatically, and courageously to those who wield White Power—economists,<sup>2</sup> Judge Posner,<sup>3</sup> Jerome's colleagues at Duke,<sup>4</sup> Justice Rehnquist,<sup>5</sup> Justice Ginsburg,<sup>6</sup> black people in white face,<sup>7</sup> and Professor Anne Coughlin.<sup>8</sup> These engagements weren't paragraphs or letters to the editor; each is a lengthy article in leading law review journals. And with similar rigor, he challenged Latinx identity in LatCrit, asking, interrogating, and answering more than once "Who is a LatCrit?"<sup>9</sup>

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<sup>2</sup> Jerome M. Culp, *Causation, Economists, and the Dinosaur: A Response to Professor Dray*, 49 L. & CONTEMP. PROBS. 23 (1986); *Foreword: Economists on the Bench*, 50 L. & CONTEMP. PROBS. 1 (1987).

<sup>3</sup> Jerome M. Culp, *Judex Economicus*, 50 L. & CONTEMP. PROBS. 95 (1987); Jerome M. Culp, Jr., *Comment: Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy*, 41 DUKE L. J. 1095 (1992).

<sup>4</sup> Jerome McCristal Culp, Jr., *Diversity, Multiculturalism, and Affirmative Action: Duke, the NAS, and Apartheid*, 41 DEPAUL L. REV. 1141 (1992) [hereinafter Culp, *Diversity*].

<sup>5</sup> Jerome McCristal Culp, Jr., *Understanding the Racial Discourse of Justice Rehnquist*, 25 RUTGERS L. J. 597 (1994).

<sup>6</sup> Jerome McCristal Culp, Jr., *An Open Letter from One Black Scholar to Justice Ruth Bader Ginsburg: Or, How Not to Become Justice Sandra Day O'Connor*, 1 DUKE J. GENDER L. & POL'Y 21 (1994).

<sup>7</sup> Jerome M. Culp, Jr., *Black People in White Face: Assimilation, Culture, and the Brown Case*, 36 WM. & MARY L. REV. 665 (1995).

<sup>8</sup> Jerome McCristal Culp, Jr., *Responses: Telling a Black Legal Story: Privilege, Authenticity, "Blunders," and Transformation in Outsider Narratives*, 82 VA. L. REV. 60 (1996) [hereinafter Culp, *Response to Professor Coughlin*].

<sup>9</sup> Jerome McCristal Culp, Jr., *Seventh Aspect of Self Hatred: Race, LatCrit, and Fighting the Status Quo*, 55 FLA. L. REV. 425, 425, 436–37 (2003) [hereinafter Culp, *Seventh Aspect of Self Hatred*]; Jerome McCristal Culp, Jr., *Latinos, Blacks, Others, and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479 (1997) [hereinafter Culp, *Latinos*].

My biography intersects with Jerome's at various times and places; we both graduated from Harvard Law in 1978. I didn't know him well, but we shared the experience of having been among the early cohorts of students of color to walk those halls. We were both chosen to receive the Clyde Ferguson Award in 1999,<sup>10</sup> awarded by the Minority Section of the AALS. I treasure the award, knowing that the honor conveyed to me was magnified considerably by sharing it with Jerome.

Neither Jerome nor Angela have written full autobiographies, but both have used what Jerome called "autobiographical moments"<sup>11</sup> to illuminate their analysis and theorizing. I will braid together fragments of their stories and hope that I don't violate the longer stories. Jerome says, "I applied to colleges in the spring of 1968 . . . and was admitted to the Univ. of Chicago and every one of the other schools I applied to except Harvard College."<sup>12</sup> I

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<sup>10</sup> The Clyde Ferguson Award, named in honor Professor C. Clyde Ferguson, Jr.—the second tenured African American on the Harvard Law School faculty—is granted to an outstanding law teacher, who in the course of his or her career has achieved excellence in the areas of public service, teaching and scholarship. The Award is particularly aimed at law teachers who have provided support, encouragement and mentoring to colleagues, students, and aspiring legal educators. All current and former professional legal educators are eligible including administrators, librarians, clinical faculty, legal writing teachers, tenure track and tenured faculty, as long as they have served more than seven years in legal academia at the time of the Award. The former winners are: Michael Olivas (1992), Jim Jones (1993), Paulette Caldwell (1994), Richard Delgado (1995), Taunya Banks (1996), Neil Gotanda (1997), Jerome Culp and Margaret Montoya (1999), Joyce Hughes (2000), Ken Nunn (2001), Frank Valdes (2002), Robert Belton (2003), Kevin Johnson (2004), Emma Coleman Jordan (2005), Stacy Leeds (2006), John O. Calmore and Ralph Smith (2007), Angela Harris and Berta Hernández Truyol (2008), Adrien Wing and Bob Chang (2009), Angela Davis (2010), Henry McGee (2011), Keith Aoki and Twila L. Perry (2012), Henry Richardson (2013), Steven Bender (2014), Mario Barnes (2015), Angela Onwuachi-Willig (2015), Catharine Smith (2016), and Devon Carbado (2017). Email from Melissa Murray, AALS Minority Section Clyde Ferguson Award Committee Member, to AALS Minority Section, November 12, 2017 (final call for Clyde Ferguson Award nominations).

<sup>11</sup> Culp, *Response to Professor Coughlin*, *supra* note 8, at 75 n.23.

<sup>12</sup> Culp, *Diversity*, *supra* note 4, at 1153.

have been teaching . . . since graduating from law school and I taught for a number of years before that as a graduate student.”<sup>13</sup>

In 1991, Jerome wrote about “finding the me in the legal academy”<sup>14</sup> examining the use of personal stories in legal scholarship, teaching, and faculty relations. Jerome writes, “‘I am,’ I say slowly, ‘the son of a poor coal miner.’”<sup>15</sup> Typically, on the first day of class, some student raises a question that includes, ‘Where did you go to school?’. I understand that question to be, ‘What gives you the right to teach this course to me?’.”<sup>16</sup> Jerome explains that describing where he went to school satisfies most students, but saying he’s the son of a poor coal miner “has a transformational potential greater than my CV. Who we are matters as much as what we are and what we think, and it’s important to teach students about the ‘me’ in the law.”<sup>17</sup> In another article, he muses, “a number of people have told me they interpreted [this] article on autobiography . . . consistent with what has been called the Afro-American Jeremiad.”<sup>18</sup> The word Jeremiad has a double meaning; one of overcoming disadvantage, thriving. And another more pejorative meaning when used as a list of woes or a mournful lamentation. This is not what I hear in Jerome’s stories. But, I wonder when is the right time for Jeremiads, yours and mine?

In 1991, Jerome wrote, “I teach tort law, and early in that process I use a hypothetical from my past. As an undergraduate at the University of Chicago, I asked my girlfriend to accompany me to Evanston, Ill. . . . Near the train station we saw an old white woman. As my girlfriend and I

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<sup>13</sup> *Id.* at 1169.

<sup>14</sup> Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539, 539 (1991) [hereinafter Culp, *Autobiography*].

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 543.

<sup>17</sup> *Id.*

<sup>18</sup> Jerome McCristal Culp, Jr., *You Can Take Them to Water but You Can’t Make Them Drink: Black Legal Scholarship and White Legal Scholars*, 1992 U. ILL. L. REV. 1021, 1024 (1992).

approached the woman, she began to shake . . . I remember . . . the old white woman turning her back and assuming a pseudo-fetal posture as we approached her. I could read that situation as clearly as any other: . . . she knew we were Black Panthers who had come to Evanston to do her harm.”<sup>19</sup> “[Then] I ask my class whether it would have been an assault for me to lean over and to whisper ‘boo’ to that old woman. I then add that I thought about doing so and pause, for only a second, before saying that I did not say anything.”<sup>20</sup> Why does Jerome tell students this story about himself; what are his pedagogical purposes; does the story challenge institutional, theoretical, or doctrinal frameworks?

In the 1997 LatCrit symposium, Jerome writes “narrative . . . is not just a story . . . [it’s] what we believe, and what I hope LatCrit will . . . adhere to . . . that we do not accept the status quo.”<sup>21</sup> “[We reject] the white supremacy that is buried in traditional legal analysis.”<sup>22</sup> Jerome tells us he’s sharing a story he’s never told before.<sup>23</sup> “[This story] involves my name, Jerome McCristal Culp, Jr. . . . [M]y father demanded that his first son be named Jerome McCristal Culp, Jr. He got the name because my grandmother won a contest. The supervisor at my grandfather’s mine was named Jerome McCristal and he did not have any children and the first woman who had a child in 1926 was to name her child after him and be given a number of prizes for the act of naming . . . So, my father became Jerome McCristal Culp.”<sup>24</sup>

There is a lesson for LatCrit in this story. He says, “we have to have a name, and in order to be understandable it has to have a history . . . if we are to be great, we have to be more than our histories, but at the same time we

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<sup>19</sup> Culp, *Autobiography*, *supra* note 17, at 552.

<sup>20</sup> *Id.* at 553.

<sup>21</sup> Culp, *Latinos*, *supra* note 9, at 480.

<sup>22</sup> *Id.* at 481.

<sup>23</sup> *Id.* at 482.

<sup>24</sup> *Id.*

have to learn from them.”<sup>25</sup> Yesterday, we heard Frank Valdes say to be identity-blind is to be reality-blind. Identities map realities. Jerome was cautioning us that the present becomes history, so we must learn from that history to be more than our histories.

In 1996, Jerome wrote an impassioned and full-throated response<sup>26</sup> to Professor Anne Coughlin, whose article “Regulating the Self: Autobiographical Performances in Outsider Scholarship”<sup>27</sup> was one of several high profile screeds against the use of personal stories mostly by scholars of color in legal writing.<sup>28</sup> (Coughlin also includes my *Mascaras* article<sup>29</sup> in her first footnotes as one of several examples of these sorts of performative Outsider autobiographies.<sup>30</sup>) Jerome says she rejects his life as “revolutionary [and] should (and will) be seen as a kind of ‘Horatio Alger’ story, that is, as normal and standard American fare,”<sup>31</sup> and that she claims that Jerome’s stories “[lack] a clear institutional and theoretical framework for change.”<sup>32</sup> He counters that her “account of my life fails in part because she does not listen to the stories I have been telling. She . . . engag[es] in a tortured interpretation of my history and narratives.”<sup>33</sup> Jerome demolishes Coughlin’s contentions; as he models how to Talk Back to Whiteness with precision and clarity of purpose, he exposes her careerist motivations for attacking Outsider scholarship as well as her ignorance of both the

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<sup>25</sup> *Id.*

<sup>26</sup> Culp, *Response to Professor Coughlin*, *supra* note 8.

<sup>27</sup> See Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229 (1995). [hereinafter Coughlin].

<sup>28</sup> See Culp, *Response to Professor Coughlin*, *supra* note 8, at page 73, text accompanying nn.11-14.

<sup>29</sup> See Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN’S L. J. 185 (1994) [hereinafter Montoya, *Máscaras HWLJ*].

<sup>30</sup> Coughlin, *supra* note 27, at 1230 n.2.

<sup>31</sup> Culp, *Response to Professor Coughlin*, *supra* note 8, at 74.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

provenance of Horatio Alger stories<sup>34</sup> and the meaning of the Frederick Douglass quotes she invokes.<sup>35</sup>

Stories have been crucial to LatCrit. Jerome's stories teach us how and why to put the "me" in scholarship and teaching. His autobiographical moments in LatCrit spaces enact the intersectionality that has become emblematic of LatCrit. He helped us coalesce into a multidimensional community of scholars. He taught us to defend our stories, to listen closely to one another, and to resist and reject those who would belittle our experiences, challenge our methods, or deny our truths.

Let me turn now to Angela's autobiographical moments. But before I do, let me introduce the concept of "fractal fragments"<sup>36</sup> to expand this idea of why race scholars have drawn on their own lives when engaged in academic work. As some of you know, my husband is a mathematician, a geometer, and through him, I am drawn to scientific imagery. Fractals are mathematical structures or objects that exhibit similarities across different scales of focus.<sup>37</sup> For example, if you study a fern, you will see that the branching structure is repeated at each level of magnification. Lesley Kuhn, an Australian professor at the University of Western Sydney School of Business,<sup>38</sup> uses the term "fractal fragments" to describe stories or narratives that illustrate theoretical materials.<sup>39</sup>

When Jerome says he is the son of a poor coal miner,<sup>40</sup> and when I write that I remember my mother braiding my hair,<sup>41</sup> we instantiate the concept of

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<sup>34</sup> *Id.* at 80.

<sup>35</sup> *Id.* at 81.

<sup>36</sup> LESLEY KUHN, *ADVENTURES IN COMPLEXITY: FOR ORGANIZATIONS NEAR THE EDGE OF CHAOS* 71 (2009).

<sup>37</sup> *Id.* at 66.

<sup>38</sup> *Staff Profiles: Doctor Lesley Kuhn*, U. WESTERN SYDNEY, [https://www.westernsydney.edu.au/staff\\_profiles/uws\\_profiles/doctor\\_lesley\\_kuhn](https://www.westernsydney.edu.au/staff_profiles/uws_profiles/doctor_lesley_kuhn) [<https://perma.cc/WW4E-MDQP>] (last visited Feb. 17, 2018).

<sup>39</sup> *Id.*

<sup>40</sup> Culp, *Autobiography*, *supra* note 14.

<sup>41</sup> Montoya, *supra* note 29, at 186.



fractality. The stories function as shorthand for the many details across many units that are encompassed in the tort theories he is teaching and in the racially inflected educational experiences I am describing. Fractal fragments can be thought of as a particularly effective technique for communicating multilayered information, such as the lived experiences of subordinated people within tort doctrine or the conditions of girls of color. The context and subtext of our individual stories—our fractal fragments, our piece of the fern—link to other stories, to the larger fern frond.

Listen now to Angela's words:

I grew up with the children of farmers in a small Ohio town, but the farmers' kids were all white. The black kids' parents mostly worked for the local Air Force base, like my dad. No black kid I knew had agrarian dreams. From my father and father's father, I sometimes heard stories about farm life in Virginia, where that side of the family had roots. But the funny stories about close encounters with chickens were overshadowed by a darker story about the time my grandfather, still a child, saw a dead black man, noose around his neck, hanging from a tree. My father's side of the family, like so many other black people, left the country. They reinvented themselves in the city, working in Philadelphia as domestics and janitors to begin the long, multigenerational climb into the new middle class.<sup>42</sup>

Let me go back to fractal fragments. When I read that Jerome was the son of a poor coal miner,<sup>43</sup> I'm reminded that my father's father was a poor copper miner. My father was in college, followed by graduate school, until I was in 10<sup>th</sup> grade; we also reinvented ourselves and began the long, multigenerational climb into the new middle class.<sup>44</sup> The details of our stories—Jerome's, Angela's, and mine—are not identical; they lack self-similarity in a manner similar to those ferns. What I mean when I say our

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<sup>42</sup> Angela P. Harris, *[Re]Integrating Spaces: The Color of Farming*, 2 SAVANNAH L. REV. 157, 193–94 (2015) [hereinafter Harris, *Color of Farming*].

<sup>43</sup> See *supra* note 15 and accompanying text.

<sup>44</sup> See *supra* note 41 and accompanying text.

stories are fractal-like is that when we use these fragments, they're units of analysis, units of meaning. Our Race work clarifies and unpacks our stories in many ways, exploring the fractality of their context and subtext under the lens of whiteness and LatCrit-inflected anti-subordination theory and practice.

Angela writes,

I vividly remember my Welfare Law class when I was a law student. I loved the material and adored the teacher.<sup>45</sup> Miserably, every morning before class, I would go in the bathroom and throw up, anticipating that I would be called on. Partly it was performance anxiety; I was painfully shy and the class was large. . . . Only once did I really want to be called on, and it was the day we had to read and discuss George Gilder's ideas about welfare encouraging the pathology of itinerant black men and promiscuous, castrating black women. I wanted to speak from my own sense of anger and outrage. I wanted to talk about my own experience of living on food stamps and I wanted to talk about the media demonization of 'welfare queens' as an example of racism. But, strangely enough, that was one of the three times in the whole semester that I wasn't called on. In fact, none of the black students was called on, despite our hands in the air.<sup>46</sup>

Listen to Angela, now a professor:

I found myself in front of law students quite by accident. When I was growing up, I was an intensely shy, intensely unworldly, and bookish kid whose internal life was governed by a series of tensions and contradictions about identity, on many, many levels. The village in which I grew up, Yellow Springs, Ohio, was itself a place with many subsurface tensions. . . . I was a black kid in a series of

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<sup>45</sup> Angela P. Harris (with Marjorie Shultz), "*A(nother) Critique of Pure Reason*": *Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773, 1779 (1993).

<sup>46</sup> *Id.*

predominantly white environments, a black kid who liked science fiction and sensitive singer-songwriters, a black kid intensely uncomfortable with performing blackness for either black or white audiences. And I was a girl uninterested in performing girliness, drawn instead to fabulous, ironic, and self-critical artistic and cultural works and personal displays that, I would later discover, all fell under the description ‘gay.’<sup>47</sup>

Law school found me—a vaguely leftish, vaguely queer, black feminist—at one of the most ideologically right-wing institutions in the nation, the University of Chicago Law School, without really understanding how I’d gotten there. . . . I knew how to write beautiful, free-form, evocative essays on the high and popular cultures of modernity. I had no idea how to write a brief.<sup>48</sup>

A few years later, at the ripe old age of twenty-six, I was suddenly an Acting Professor of Law (and the title was so apropos—I was acting) at the University of California–Berkeley.<sup>49</sup>

I had to find a way to bring myself into the classroom, yet nothing of me felt the tiniest bit suitable.<sup>50</sup> I didn’t look anything like a law professor. I was the first black woman to hold my position at Boalt.<sup>51</sup> And I was way too young—the same age or younger than most of my students . . . —an Acting Professor, without a doubt.<sup>52</sup>

At a faculty cocktail party, someone mentions that I sing, and a colleague happily rambles on about all the ‘colored girls’ he has

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<sup>47</sup> Angela P. Harris, *Teaching the Tensions*, 54 ST. LOUIS U. L. J. 739, 740–41 (2010).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 741.

<sup>52</sup> *Id.*

known throughout his life who are musical, asking whether I know each one.<sup>53</sup>

Angela calls this a fictional account but it alludes to the very real microaggressions of academic life, experienced even by superstar professors.

Angela hasn't written much in an autobiographical vein. I asked her to suggest some articles that she considered representative of her scholarship. She suggested three: *Race and Essentialism in Feminist Legal Theory* from 1990;<sup>54</sup> *From Stonewall to the Suburbs* from 2006;<sup>55</sup> and the 2015 *[Re]Integrating Spaces: the Color of Farming*.<sup>56</sup> I cannot do justice to the scope or sophistication of Angela's analysis, but perhaps you will remember Jerome's call for us to remember our history in order to understand LatCrit.<sup>57</sup> The worth of LatCrit as an intellectual movement and ideological intervention is evidenced by counting Angela Harris in our number, and these articles that she proffers to us are compelling evidence of that worth.

Look at her topics, look at her boldness, look at her sources: in the first paper, she critiques white feminist legal theory;<sup>58</sup> in the second, she critiques the meaning and implementation of *Brown v. Board*;<sup>59</sup> and in the third, she racializes rural spaces and agrarian history.<sup>60</sup> Without flinching, she takes on iconic intellectuals,<sup>61</sup> the most famous U.S. Supreme Court

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<sup>53</sup> Angela P. Harris, *On Doing the Right Thing: Education Work in the Academy*, 15 VT. L. REV. 125, 128 (1991).

<sup>54</sup> Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 616 (1990) [hereinafter Harris, *Race and Essentialism*].

<sup>55</sup> Angela P. Harris, *From Stonewall to the Suburbs? Toward a Political Economy of Sexuality*, 14 WM & MARY BILL RTS. J. 1539 (2006) [hereinafter Harris, *Stonewall to Suburbs?*].

<sup>56</sup> Angela P. Harris, *[Re]Integrating Spaces: The Color of Farming*, 2 SAVANNAH L. REV. 157, 200 (2015) [hereinafter Harris, *Color of Farming*].

<sup>57</sup> See, *supra* note 25 and accompanying text.

<sup>58</sup> See Harris, *Race and Essentialism*, *supra* note 52.

<sup>59</sup> See Harris, *Stonewall to Suburbs?*, *supra* note 53.

<sup>60</sup> See Harris, *Color of Farming*, *supra* note 54.

<sup>61</sup> See Harris, *Race and Essentialism*, *supra* note 52 (critiquing the feminist theory of professors Catharine MacKinnon and Robin West).

decision of all time,<sup>62</sup> and the family farm—the pivotal image of American democracy.<sup>63</sup> Her sources are encyclopedic, her footnotes invoke a library that we can wander in and browse through, her knowledge extends from cases and doctrine through legal history as told by white people, as well as the elided histories of black people and other racial groups. She’s adept at drawing on other disciplines and using literary examples. I am, frankly, envious of Angela’s erudition.

The publication and widespread embrace and celebration of Angela’s “Race and Essentialism”<sup>64</sup> article sparked debate between Angela and the internationally renowned White feminist Catharine MacKinnon concerning what Angela called “gender essentialism.”<sup>65</sup> In other words, Angela writes that the feminist legal theoretical work of Catharine MacKinnon and Robin West “relies on what I call gender essentialism—the notion that a unitary, ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience.”<sup>66</sup> MacKinnon’s response was delivered at the 1997 Yale CRT conference.<sup>67</sup>

Several people who are here tonight were there. I was there. Allow me to reminisce about the 1997 Yale conference. Not yet tenured and feeling under continuous negative scrutiny at my own law school, I had yet to find some balance as a Latina law professor, and looked for hints about how to behave, how to be, particularly in these white spaces of law professors. MacKinnon’s tone and presence felt to me like she owned the place; I heard

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<sup>62</sup> See Harris, *Stonewall to Suburbs?*, *supra* note 53 (analyzing how *Brown v. Board of Education*, 347 U.S. 483 (1954), when examined under the lens of political economy, failed to bring about full racial integration because of the racial and class segregation generated by suburbanization).

<sup>63</sup> See Harris, *Color of Farming*, *supra* note 54.

<sup>64</sup> See Harris, *Race and Essentialism*, *supra* note 54.

<sup>65</sup> *Id.* at 588.

<sup>66</sup> *Id.* at 585.

<sup>67</sup> See Catharine A. MacKinnon, *Keeping It Real: On Anti-“Essentialism,”* in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes et al. eds., 2002) [hereinafter MacKinnon, *Keeping It Real*] (the talk Professor MacKinnon gave at the 1997 Yale Conference is published as this essay. See *id.* at 76 n.1).

MacKinnon's response as a critique of being critiqued and in this venue—a CRT gathering—a critique of being critiqued by a woman of color. I didn't hear her creating an opening to being critiqued as a white woman with necessarily limited experiences as all of us are limited. I did not hear Catharine MacKinnon express what I felt then and today experience when I re-read both articles—namely, that it was an honor, a privilege, to be read closely and critiqued by someone with Angela's multiplicitous mental tools. I ask you—isn't the ultimate expression of respect for legal scholarship to be read with exacting care, to acknowledge what is correct, challenge assumptions and overbroad generalizations, and offer different evidence for conclusions? That's our painstaking search for Truth and Understanding.

MacKinnon's retrospective response, a version of what she said at the Yale conference, "Keeping It Real: On Anti-'Essentialism,'" was published in the 2002 CRT anthology edited by Frank Valdes, Jerome, and Angela.<sup>68</sup> In footnote 8, MacKinnon tells us Angela's article was the most cited in 1990 and by 1998 had been referenced, by MacKinnon's count, in 191 articles.<sup>69</sup> In footnote 13, MacKinnon calls the essentialism charge, as used in more than 100 law review articles, "false" and further identifies some 14 articles which claim that her work is essentialist, citing Angela's article, as "a flood of defamation."<sup>70</sup>

Let me push this a little. For the last few years, in health sciences we have been using the work of Scott Page, who has developed and popularized the concept of Cognitive Diversity, offering mathematical explanations for the proposition that diversity trumps ability.<sup>71</sup> In his more recent book, Page identifies acquired and inherent cognitive diversity—by

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 76 n.8.

<sup>70</sup> *Id.* at 76–77 n.13.

<sup>71</sup> SCOTT E. PAGE, *THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES* at xiv-xv (2007).

inherent, he means “immutable” traits such as race and gender.<sup>72</sup> When engaged in complex tasks, he posits that a cognitively diverse group will come up with better and more durable results,<sup>73</sup> or to be more exact, Page writes, “the formal models reveal how cognitive diversity can contribute on a variety of tasks. They show how groups and teams whose members possess diverse representations, models, knowledge, and heuristics make more accurate forecasts, find better solutions to problems, come up with more creative ideas, provide broader and deeper evaluations of policies and strategies, and better discern what is true.”<sup>74</sup>

What we have explored in our work at the UNM Health Sciences Center is that cognitively diverse groups don’t necessarily work without skills, such as being experienced in cross-cultural communication, cross-racial relations, in dissent and conflict, and, most emphatically, cultural humility and intellectual modesty.<sup>75</sup> Thus, in my opinion, what could have resulted at the Yale conference was a move toward cognitive diversity—an inclusive legal feminism that encompassed multi-dimensional views—combining MacKinnon’s dominance theory<sup>76</sup> with Angela’s nuance theory, embracing contradictory voices<sup>77</sup> with the multiple consciousness that Angela (and Mari Matsuda) theorize.<sup>78</sup>

Let’s go back to the Yale conference. Towards the end of footnote 22 (of MacKinnon’s published response), MacKinnon remembers that after she spoke, Angela thanked her and said that her critique of Angela’s work was

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<sup>72</sup> SCOTT E. PAGE, *THE DIVERSITY [BONUS]: HOW GREAT TEAMS PAY OFF IN THE KNOWLEDGE ECONOMY* 54 (2017).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 221.

<sup>75</sup> See generally *A Status Report on the AIME Mentorship for Faculty of Color Pilot Project*, September 30, 2016 and 2018 *AIME Advancing Institutional Mentoring Excellence Final Report*, UNM Health Science Center Administrative Reports (forthcoming 2018) (on file with author).

<sup>76</sup> See Harris, *Race and Essentialism*, *supra* note 590.

<sup>77</sup> *Id.* at 595.

<sup>78</sup> *Id.* at 615 (citing Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *WOMEN’S RTS. L. REP.* 7 (1989)).

“fair and right.” Angela expressed “her appreciation for the attention to what she (Angela) had said back then because my work had been important to her,” which MacKinnon (as well as Professor Kim Crenshaw who, MacKinnon remembers, was sitting next to her) admired as “courageous and forthright.”<sup>79</sup> What I understood when Angela thanked MacKinnon was that she had learned from MacKinnon. However, to my ear, MacKinnon didn’t reciprocate, wouldn’t hear that her account was partial and incomplete, and couldn’t acknowledge that she stood to learn from Angela. I mentioned that MacKinnon used the word “defamation” to characterize the articles that cited Angela’s essentialism charge.<sup>80</sup> According to Google Scholar, Angela’s article has now been cited more than 2,850 times.<sup>81</sup> Assuming that many who cite the article agree with the idea of gender essentialism, that’s a lot of defamation.

LatCrit is now a mature, intellectual academic community, having survived internal conflicts and accomplished, against great odds, its primary goal of changing the face of the legal professoriate through its recruitment, cultivation, mentoring, and leadership development of dozens of faculty of color.<sup>82</sup> In doing so, LatCrit has engendered a new multidimensional discourse about race, identity, and anti-subordination that has reverberated throughout the legal academy and provided new models and platforms for Outsiders. Angela has been a founding member of LatCrit, a long-term board member, and a leading voice among us. LatCritters are now University leaders, deans, endowed chair-holders, prolific authors, public

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<sup>79</sup> MacKinnon, *Keeping It Real*, *supra* note 65, at 80 n.22.

<sup>80</sup> See *supra* note 68 and accompanying text.

<sup>81</sup> Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 616 (1990).

<sup>82</sup> For the range of ongoing programs and completed projects, see Latina & Latino Critical Legal Theory, Inc. <http://latcrit.org/index/> (the webpage lists specific programs that improved the employment opportunities for faculty of color, such as, the Junior Faculty Development Workshop and the Student Scholar Program).



intellectuals, and thought leaders;<sup>83</sup> the LatCrit conference has attracted young and old over two decades. Law schools, however, face many challenges both internally, with a changing profession<sup>84</sup> and falling enrollments,<sup>85</sup> as well as externally because of volatile social justice issues<sup>86</sup> and threats to democracy.<sup>87</sup> These implicate and complicate LatCrit's future. Can law schools of today create spaces to fulfill the dreams expressed here at the conference, namely for students to develop their full potential as Professor Gerald Torres (Univ. of Texas) hopes, or teach

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<sup>83</sup> The following is a list of selected faculty who have participated in LatCrit events and helped develop the LatCrit community who hold positions of leadership and/or influence, listed by categories: Law School Deans: Leonard Baynes (Univ. of Houston Law Center), Camille Nelson (American University School of Law), Roberto (Beto) Juarez (former Dean, University of Denver, Sturm School of Law), and Carla Pratt (Washburn Univ. School of Law). Endowed Chair-holders: Berta Hernandez (Levin Mabie & Levin Professor of Law (Univ. of Florida Levin College of Law), Angela Harris (Distinguished Professor of Law, Boochever and Bird Endowed Chair for the Study and Teaching of Freedom of Equality, UC-Davis School of Law), Roberto Corrada, Mulligan Burleson Chair in Modern Learning (Univ. of Denver Sturm School of Law), and Gerald Torres, Jane M.G. Foster Professor of Law (Cornell Law School). Prolific authors: Richard Delgado (Univ. of Alabama School of Law) and Steve Bender (Seattle Univ. School of Law). Public intellectuals: Michael Olivas (William B. Bates Distinguished Chair of Law, Univ. of Houston Law Center), Sumi Cho (DePaul Univ. College of Law), and Thought leaders: Frank Valdes (Univ. of Miami School of Law), Laura Gomez (UCLA School of Law), and Tayyab Mahmud (Seattle Univ. School of Law).

<sup>84</sup> Joel Stashenko, *No Easy Answers for Challenges Facing Law Schools*, NEW YORK LAW JOURNAL, (Jan. 30, 2014), <https://www.law.com/newyorklawjournal/almID/1202640643057/?slreturn=20180625151540> [https://perma.cc/EK6S-CDAY].

<sup>85</sup> *Id.*

<sup>86</sup> Universities and law schools have been disrupted by police violence. *See Minorities at Harvard, other law schools seek delays in finals because they've been busy protesting*, MASSLIVE (Dec. 10, 2014), [http://www.masslive.com/news/index.ssf/2014/12/minorities\\_at\\_harvard\\_other\\_la.html](http://www.masslive.com/news/index.ssf/2014/12/minorities_at_harvard_other_la.html) [https://perma.cc/3CB8-2M3B].

<sup>87</sup> Jared Diamond, *Four Threats to U.S. Democracy*, UCLA NEWSROOM (Feb. 18, 2014) <http://newsroom.ucla.edu/stories/four-threats-to-american-democracy-250120> [https://perma.cc/TEJ3-GKEM] (identifying these four threats: deterioration in political compromise, restrictions on the right to vote, gap between rich and poor, and decline in government investment in public purposes).

students the skills of solidarity as Professor Athena Mutua (Univ. at Buffalo) hopes? Isn't it, really, up to LatCrit?

We are now post-Obama and in the midst of the Trump-ian revolution. The conference title asks, "What next?". The 2016 election results create a new urgency for anti-subordination theory, community, and praxis. Angela's older work on neoliberalism and suburbanization's reversal of civil rights progress in such cases as *Brown v. Board*<sup>88</sup>, *Goodridge v. DPH*<sup>89</sup>, and *Lawrence v. Texas*<sup>90</sup>, continues to have tremendous import for us.<sup>91</sup> Neoliberalism (a term encompassing deregulation, privatization, inequalities, free markets, culture wars) is in everyday usage in Mexican newspapers to refer to the U.S. and other hegemonies; yet how often do you find it in the NYT?<sup>92</sup> Stanley Fish noted this omission when, in 2009, he wrote in the NY Times, "I've been asking colleagues in several departments and disciplines whether they've ever come across the term 'neoliberalism' and whether they know what it means. A small number acknowledged having heard the word; a very much smaller number ventured a tentative definition."<sup>93</sup>

Well, Fish should have read Angela then, and if you don't know this article,<sup>94</sup> read it; it's brilliant. Her recent work on the *Color of Farming* takes Angela back to Yellow Springs and the agrarian roots of her family.<sup>95</sup> She suggests Race Critics collaborate with environmentalists to produce a

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<sup>88</sup> 347 U.S. 483 (1954).

<sup>89</sup> 798 N.E.2d 941 (Mass. 2003).

<sup>90</sup> 539 U.S. 558 (2003).

<sup>91</sup> See, Harris, *From Stonewall to Suburbs?*, *supra* note 53.

<sup>92</sup> A cursory search of the NYT website shows that there have been ebbs and flows for the usage of the term neoliberalism. The *New York Times* search function finds 555 results for this term, dating back to 1939. N.Y. TIMES, nytimes.com.

<sup>93</sup> Stanley Fish, *Neoliberalism and Higher Education*, N.Y. TIMES (Mar. 9, 2009) <https://opinionator.blogs.nytimes.com/2009/03/08/neoliberalism-and-higher-education/> [<https://perma.cc/QAU2-7992>].

<sup>94</sup> See Harris, *Stonewall to Suburbs?*, *supra* note 53.

<sup>95</sup> See Harris, *Color of Farming*, *supra* note 54.

more inclusive agrarian theory and praxis.<sup>96</sup> Angela's scholarship contains a electoral position must forego "identity politics" and that climate change policies will ineluctably favor the rich. And Angela's ongoing work with , rejection of the politics of "leaning in,"<sup>97</sup> as if that's ever been a viable option for women of color. I regret that I don't have more time to examine these articles in greater depth.

In closing, let me segue back to Jerome. In 2003, in an article that he entitles, "Seventh Aspect of Self Hatred: Race, LatCrit, and Fighting the Status Quo,"<sup>98</sup> Jerome writes, "my friend Roberto Corrada asked at the fifth LatCrit conference, 'are you a LatCrit?'"<sup>99</sup> Jerome goes on:

This . . . requires me to acknowledge my own demons of self-hatred . . . important for those of us who see ourselves as feminists or queer.<sup>100</sup> A number of years ago, in my first year of teaching at Duke Law School, I was hospitalized for two days in intensive care . . . with undiagnosed diabetes.<sup>101</sup> Shortly after I returned to teach my first year law students, a 3<sup>rd</sup> year student came to my office . . . a very muscular Black man in his mid 20s . . . He had come to welcome me to the community of diabetics.<sup>102</sup>

Jerome continues,

My mother, then still alive, was a diabetic, but the shame—the internalized shame—of admitting that I was in that company was too much for me. I hated what was part of me . . . and it drove me to reject this identity. 18 months ago [my family doctor told me] my

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<sup>96</sup> *Id.*

<sup>97</sup> SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* (2013) (Sandberg, the Chief Operating Officer of Facebook, argues that women unintentionally hold themselves back in their careers; I contend her advice is more applicable to White women than women of color who face high barriers of both conscious and unconscious discrimination).

<sup>98</sup> Culp, *Seventh Aspect of Self-Hatred*, *supra* note 14.

<sup>99</sup> *Id.* at 425.

<sup>100</sup> *Id.* at 427.

<sup>101</sup> *Id.* at 428.

<sup>102</sup> *Id.*

kidney function was at 10 percent and I would have to go on kidney dialysis. 6 months and 3 operations later, I began dialysis. Three times a week . . . I spend four and a half hours having the blood . . . cleaned.<sup>103</sup>

What kidney dialysis taught me is that identity is not permanent, either in a time sense or even from moment to moment.<sup>104</sup> (and that's a lesson that I too have learned from my work in health sciences and from my own aging; our identity as able-bodied is fragile and vanishes over time).

Jerome goes on,

several years ago I was traveling in the first class section of an airplane. . . I overheard a conversation between two sets of passengers who had met on the plane . . . One middle-aged male, apparently traveling with his wife, asked an obviously retirement-age White heterosexual couple whether they were from Illinois.<sup>105</sup> The older couple responded no, they had spent most of their lives in California and retired to Illinois. The middle aged White couple said . . . most people did the opposite . . . retiring to places like California or Arizona. The couple said they left California because, 'No one spoke English.' . . . the middle-aged White couple<sup>106</sup> nodded knowingly and agreed, but said that is only true of 'Southern' California. 'Northern' California is not like that.<sup>107</sup> . . . The older White couple agreed adding, 'But everyone is Asian there.'

Jerome writes,

"I remained silent throughout that discussion."<sup>108</sup>

Jerome explains,

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<sup>103</sup> *Id.* at 429.

<sup>104</sup> *Id.* at 430.

<sup>105</sup> *Id.* at 435.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 436.

<sup>108</sup> *Id.*

I am a LatCrit because of that story. I remained silent and by doing so, I engaged in a form of the seventh aspect of self-hatred . . . When those White travelers attacked others, they attacked me. By not claiming my Asianness and Latina/o-ness, I became part of the oppression of others and myself. This is the reason I am a LatCrit. To not claim the otherness that my White colleagues sometimes reject, I became what I fear—a disembodied identity, unconnected to others who share my many oppressions. I am a LatCrit precisely because to fail to be is to engage in that self-hatred that I am trying to avoid.<sup>109</sup>

In 2003, Jerome again wrote about his dialysis.<sup>110</sup>

The medical literature describes my condition as End Stage Renal Disease. If I had lived in the first half of the last century instead of the first half of this one, I would now be dead.<sup>111</sup>

In February 2004, Jerome passed.<sup>112</sup>

In closing, I have taken the liberty of using fragments of Jorge Luis Borges' poem called, "Learning,"<sup>113</sup> because it reminds me of why we honor Jerome and Angela. I will use a translation rather than reading the original Spanish. But much is lost in the melody, the ear quality of Borges' word choices.

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<sup>109</sup> *Id.*

<sup>110</sup> Jerome M. Culp Jr., Angela P. Harris & Francisco Valdes, *Subject Unrest*, 55 STANFORD L. REV. 2435 (2003).

<sup>111</sup> *Id.* at 2439.

<sup>112</sup> *Duke Law Professor Jerome Culp Dies at Age 53*, DUKE TODAY (Feb. 6, 2004), [https://today.duke.edu/2004/02/culp\\_0204.html](https://today.duke.edu/2004/02/culp_0204.html) [<https://perma.cc/69TL-VXTY>].

<sup>113</sup> Jorge Luis Borges, *Aprendiendo*, <https://elprincipito.blogia.com/2005/101102-jorge-luis-borges-aprendiendo.php> (last visited on November 21, 2017). The Spanish version is attached as an appendix, followed by the English translation called *Learning*, translation by Blanca Zarsan <http://translationwanderer.tumblr.com/post/71905486399/learning-by-jorge-luis-borges> (last visited on November 21, 2017) [<https://perma.cc/JD8L-STTF>].

After some time, you learn  
...you learn that you can actually bear hardship,  
that you are actually strong,  
and you are actually worthy,  
and you learn and learn...and so every day.

Over time you learn to build your roads on today,  
because the path of tomorrow doesn't exist.

Over time you realize that in fact the best was not the  
future,  
but the moment you were living just that instant.

Over time you will learn to forgive or ask for  
forgiveness,  
say you love, say you miss, say you need,  
say you want to be friends, since before  
a grave, it will no longer make sense.

But unfortunately, only over time..."

This is LatCrit XXI; if we are asked, "Are you a LatCrit?"<sup>114</sup> we can answer "yes" because we aspire to be like, and are inspired by, Angela and Jerome. Mil gracias, a thousand thank you's.

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<sup>114</sup> See *supra* note 88 and accompanying text.

## APPENDIX.

Jorge Luis Borges: Aprendiendo

“Después de un tiempo, uno aprende la sutil diferencia entre sostener una mano y encadenar un alma.

Y uno aprende que el AMOR no significa acostarse.

Y que una compañía no significa seguridad, y uno empieza a aprender ....

Que los besos no son contratos y los regalos no son promesas, y uno empieza

a aceptar sus derrotas con la cabeza alta y los ojos abiertos, y uno aprende a construir todos sus caminos en el hoy, porque el terreno del mañana es demasiado inseguro para planes ... y los futuros tienen su forma de caerse por la mitad.

Y después de un tiempo uno aprende que, si es demasiado, hasta el calor del Sol puede quemar.

Así que uno planta su propio jardín y decora su propia alma, en lugar de esperar a que alguien le traiga flores.

Y uno aprende que realmente puede aguantar, que uno es realmente fuerte, que uno realmente vale, y uno aprende y aprende ... y así cada día.

Con el tiempo aprendes que estar con alguien, porque te ofrece un buen futuro, significa que tarde o temprano querrás volver a tu pasado.

Con el tiempo comprendes que sólo quien es capaz de amarte con tus defectos

sin pretender cambiarte, puede brindarte toda la felicidad.

Con el tiempo te das cuenta de que si estás con una persona sólo por acompañar tu soledad, irremediablemente acabarás no deseando volver a verla.

Con el tiempo aprendes que los verdaderos amigos son contados y que quien no lucha por ellos tarde o temprano se verá rodeado sólo de falsas amistades.

Con el tiempo aprendes que las palabras dichas en momentos de ira siguen hiriendo durante toda la vida.

Con el tiempo aprendes que disculpar cualquiera lo hace, pero perdonar es atributo sólo de almas grandes.

Con el tiempo comprendes que si has herido a un amigo duramente, es muy probable que la amistad jamás sea igual.

Con el tiempo te das cuenta que aun siendo feliz con tus amigos, lloras por aquellos que dejaste ir.

Con el tiempo te das cuenta de que cada experiencia vivida con cada persona es irrepetible.

Con el tiempo te das cuenta de que el que humilla o desprecia a un ser humano, tarde o temprano sufrirá multiplicadas las mismas humillaciones o desprecios.

Con el tiempo aprendes a construir todos tus caminos en el hoy, porque el



sendero del mañana no existe.

Con el tiempo comprendes que apresurar las cosas y forzarlas a que pasen, ocasiona que al final no sean como esperabas.

Con el tiempo te das cuenta de que en realidad lo mejor no era el futuro, sino el momento que estabas viviendo justo en ese instante.

Con el tiempo verás que aunque seas feliz con los que están a tu lado, añorarás a los que se marcharon.

Con el tiempo aprenderás a perdonar o pedir perdón, decir que amas, decir que extrañas, decir que necesitas, decir que quieres ser amigo, pues ante una tumba ya no tiene sentido.

Pero desafortunadamente, sólo con el tiempo...”

Learning by Jorge Luis Borges

After some time, you learn the subtle difference between  
holding a hand  
and imprisoning a soul;  
You learn that love does not equal sex,  
and that company does not equal security,  
and you start to learn....  
That kisses are not contracts and gifts are not promises,  
and you start to accept defeat with the head up high  
and open eyes,  
and you learn to build all roads on today,  
because the terrain of tomorrow is too insecure for plans...  
and the future has its own way of falling apart in half.

And you learn that if it's too much  
even the warmth of the sun can burn.

So you plant your own garden and embellish your own soul,  
instead of waiting for someone to bring flowers to you.

And you learn that you can actually bear hardship,  
that you are actually strong,  
and you are actually worthy,  
and you learn and learn...and so every day.

Over time you learn that being with someone  
because they offer you a good future,  
means that sooner or later you'll want to return to your past.

Over time you comprehend that only who is capable  
of loving you with your flaws, with no intention of changing you  
can bring you all happiness.

Over time you learn that if you are with a person  
only to accompany your own solitude,  
irremediably you'll end up wishing not to see them again.

Over time you learn that real friends are few  
and whoever doesn't fight for them, sooner or later,  
will find himself surrounded only with false friendships.

Over time you learn that words spoken in moments of anger  
continue hurting throughout a lifetime.

Over time you learn that everyone can apologize,  
but forgiveness is an attribute solely of great souls.

Over time you comprehend that if you have hurt a friend harshly  
it is very likely that your friendship will never be the same.

Over time you realize that despite being happy with your friends,  
you cry for those you let go.

Over time you realize that every experience lived,  
with each person, is unrepeatable.

Over time you realize that whoever humiliates  
or scorns another human being, sooner or later  
will suffer the same humiliations or scorn in tenfold.

Over time you learn to build your roads on today,  
because the path of tomorrow doesn't exist.

Over time you comprehend that rushing things or forcing them to happen  
causes the finale to be different from expected.

Over time you realize that in fact the best was not the future,  
but the moment you were living just that instant.

Over time you will see that even when you are happy with those around  
you,  
you'll yearn for those who walked away.

Over time you will learn to forgive or ask for forgiveness,  
say you love, say you miss, say you need,  
say you want to be friends, since before  
a grave, it will no longer make sense.

But unfortunately, only over time..."

Translation by: Blanca Zarsan